

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Aging and Disability Services
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Augusta, Maine 04333-0011
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Fax (Disability) (207) 287-9915; Fax (Aging) (207) 287-9229
TTY: Dial 711 (Maine Relay)

DATE: October 26, 2022

TO: Interested Parties

FROM: Paul Saucier, Director, Office of Aging and Disability Services

SUBJECT: Proposed Rulemaking: (1) Repeal and Replace of 10-149 C.M.R. ch 5, § 65, Nutrition Services with 10-149 C.M.R. ch. 6 § 5, Nutrition Services Program; (2) Amend 10-149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History

PUBLIC HEARING: Wednesday, November 16, 2022, at 11 am. Due to the ongoing threat posed by COVID-19, DHHS has determined that its public hearings will be conducted solely remotely, via ZOOM. This is in accordance with the DHHS Remote Rulemakings Hearings Policy issued September 10, 2021. To register, please use this link:

<https://mainestate.zoom.us/meeting/register/tZ0vcumvqzsrGtM0mNe8MwjvdPaOWjecXesr>

After registering, you will receive a confirmation email containing information about joining the hearing. Interpreter services will be provided during the hearing upon request.

COMMENT DEADLINE: Monday, November 28, 2022, at 11:59 pm

This letter gives notice of proposed rulemaking: (1) Repeal and Replace of 10-149 C.M.R. ch 5, § 65, Nutrition Services with 10-149 C.M.R. ch. 6 § 5, Nutrition Services Program; and (2) Amend 10-149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History

Repeal and Replace of 10-149 C.M.R. ch 5, § 65, Nutrition Services with 10-149 C.M.R. ch. 6 § 5, Nutrition Services Program

The Department proposes to repeal and replace 10-149 C.M.R. Chapter 5, Section 65 with 10-149 C.M.R. Chapter 6, Section 5. The purpose of this proposed rulemaking is to update the Department's nutrition services rule in accordance with the requirements outlined in the 2020 reauthorization of the Older Americans Act, 42 U.S.C. §§ 3001, *et seq.* This proposed rule also removes outdated references to the Bureau of Elder and Adult Services and provides additional clarity around eligibility requirements for older adults to receive nutrition services.

Nutrition services authorized by the rule are provided by Area Agencies on Aging (AAAs) that are under contract with the Department's Office of Aging and Disability Services (OADS), or by their subcontractors. Nutrition services regulated under this rule are funded by block grants from the Administration for Community Living ("ACL") in the U.S. Department of Health and Human Services.

The proposed rule states operational requirements for providers, including:

- maximizing the number of eligible individuals who are provided an opportunity to receive nutrition services;

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- outreach, intake, and information and assistance/referral services in conformance with 10-149 C.M.R. ch. 5, § 67;
- the creation and maintenance of wait lists for nutrition services, if necessary;
- when and how providers may seek voluntary contributions from recipients for the cost of meals;
- why and how providers of nutrition services may deny, reduce, or terminate nutrition services for individuals;
- minimum nutritional requirements for meals and compliance with the State of Maine Food Code, 10-144 C.M.R. ch. 200;
- reporting of food borne illness;
- menu planning and the provision of special meals when possible to meet recipients' dietary, religious, and cultural requirements and preferences;
- recipient satisfaction surveys;
- group purchasing and other cost-saving measures;
- necessary contents of subcontracts for nutrition services;
- designation of full-time Nutrition Directors and consultation with registered dietitians;
- preparation and distribution of nutrition manuals establishing procedures relating to sanitation, food handling and storage, reporting of food borne illness and handling medical and other emergencies; and
- data collection and reporting.

Imposing these requirements on AAAs and their subcontractors enables OADS to comply with the Older Americans Act and with the Department's block grants from the ACL.

10-149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History:

The Department proposes to (1) update the Introduction; (2) delete the Section 65 Table of Contents from the Chapter 5 Table of Contents; and (3) update the Rule History.

Rules and related rulemaking documents may be reviewed at, or printed from, the OADS website at <https://www.maine.gov/dhhs/oads/trainings-resources/policy.html> or for a fee, interested parties may request a paper copy of rules by calling (207) 287-7055 or Maine Relay number 711.

A concise summary of the proposed rule is provided in the Notice of Agency Rulemaking Proposal, which can be found at <http://www.maine.gov/sos/cec/rules/notices.html>. This notice also provides information regarding the rulemaking process. Please address all comments to the agency contact person identified in the Notice of Agency Rulemaking Proposal.

Notice of Agency Rulemaking Proposal

AGENCY: Department of Health and Human Services, Office of Aging and Disability Services

CHAPTER NUMBER AND TITLE: (1) Repeal and Replace of 10-149 C.M.R. ch 5, § 65, Nutrition Services with 10-149 C.M.R. ch. 6 § 5, Nutrition Services Program; and (2) Amend 10-149 C.M.R. Chapter 5, Introduction, Table of Contents, Rule History

TYPE OF RULE (*check one*): ☒ Routine Technical ☐ Major Substantive

BRIEF SUMMARY:

Repeal and Replace of 10-149 C.M.R. ch 5, § 65, Nutrition Services with 10-149 C.M.R. ch. 6 § 5, Nutrition Services Program

The Department proposes to repeal and replace 10-149 C.M.R. Chapter 5, Section 65 with 10-149 C.M.R. Chapter 6, Section 5. The purpose of this proposed rulemaking is to update the Department's nutrition services rule in accordance with the requirements outlined in the 2020 reauthorization of the Older Americans Act, 42 U.S.C. §§ 3001, *et seq.* This proposed rule also removes outdated references to the Bureau of Elder and Adult Services and provides additional clarity around eligibility requirements for older adults to receive nutrition services.

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The Department proposes to (1) update the Introduction; (2) delete the Section 65 Table of Contents from the Chapter 5 Table of Contents; and (3) update the Rule History.

Date, time and location of PUBLIC HEARING (*if any*): Wednesday, November 16, 2022, at 11 am.

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<https://mainestate.zoom.us/join/91618120000>

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COMMENT DEADLINE: Monday, November 28, 2022, at 11:59 pm

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*):

Joseph Zamboni, Policy and Program Developer
Maine Department of Health and Human Services
Office of Aging and Disability Services
41 Anthony Avenue
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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): The Department does not anticipate that this rulemaking will have an impact on municipalities or counties.

STATUTORY AUTHORITY FOR THIS RULE: 22 M.R.S. §§ 42(1), 5106(10)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*):

AGENCY WEBSITE: <https://www.maine.gov/dhhs/oads>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: sara.gagne-holmes@maine.gov



10
DEPARTMENT OF HEALTH AND HUMAN SERVICES
149
OFFICE OF AGING AND DISABILITY SERVICES
f/k/a/ OFFICE OF ELDER SERVICES

Chapter 5
POLICY MANUAL

Effective January 2, 2001

Note exceptions:

Sections 40, 61, 62, 63, 68, 69 amended effective July 1, 2003
Sections 40, 61, 62, 63, 65, 68, 69, 70 and 75 amended effective July 8, 2002
Section 73 amended effective July 1, 2001
Section 74 repealed effective July 8, 2002
Section 73 repealed effective August 10, 2004
Section 71 amended effective September 1, 2004
Sections 65, 67, 70, 75 amended effective September 1, 2004
Sections 40 and 63 amended effective October 4, 2004
Sections 63 and 69 amended effective October 30, 2005
Section 10 amended effective July 1, 2006
Section 69 amended effective July 2, 2006
Sections 11, 12, 14, 15, 16 effective October 6, 2007
Sections 68 and 69, effective February 1, 2009
Sections 63 and 69 amended (EMERGENCY) effective July 1, 2009
Sections 63 and 69 amended effective September 28, 2009
Sections 11, 12, and 14 repealed effective May 28, 2018

[Section 65 repealed effective](#)

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This notice is provided as required by and in accordance with Title VI of the Civil Rights Act of 1964, as amended by the Civil Rights Restoration Act of 1991 (42 U.S.C. § 1981, 2000e *et seq.*); ~~Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*); and Title IX of the Education Amendments of 1972;~~ Section 1557 of the Affordable Care Act; the Maine Human Rights Act; Executive Order Regarding State of Maine Contracts for Services; and all other laws and regulations prohibiting such discrimination. ~~the Maine Department of Health and Human Services does not discriminate on the basis of sex, race, color, national origin, disability or age in admission or access to treatment or employment in its programs and activities.~~

Questions, concerns, complaints or requests for additional information regarding the ADA and hiring or employment practices may be forwarded to the DHHS ADA/EEO Coordinators at 11 State House Station, Augusta, Maine 04333-0011; 207-287-1877 (V); 207-215-5980 (C); or Maine Relay 711 (TTY).

Questions, concerns, complaints or requests for additional information regarding the ADA and

programs, services, or activities may be forwarded to the DHHS ADA/Civil Rights Coordinator, at 11 State House Station, Augusta, Maine 04333-0011; 207-287-3707 (V); Maine Relay 711 (TTY); or ADA-CivilRights.DHHS@maine.gov.

Civil rights complaints may also be filed with the U.S. Department of Health and Human Services, Office of Civil Rights, by phone at 800-368-1019 or 800-537-7697 (TDD); by mail to 200 Independence Avenue, SW, Room 509, HHS Building, Washington, D.C. 20201; or electronically at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>. Individuals who need auxiliary aids for effective communication in program and services of DHHS are invited to make their needs and preferences known to the ADA/Civil Rights Coordinator.

~~The Affirmative Action Officer has been designated to coordinate our efforts to comply with the U.S. Department of Health and Human Services regulations (45 C.F.R. Parts 80, 84 and 91) and the U.S. Department of Education (34 C.F.R. Part 106) implementing these Federal laws. Inquiries concerning the application of these regulations and our grievance procedures for resolution of complaints alleging discrimination may be referred to The Affirmative Action Officer at 221 State Street, Augusta, Maine 04333. Telephone number: (207) 287-3488 (Voice) or 1-800-332-1003 (TTY), or to the Assistant Secretary of the Office of Civil Rights, Washington, D.C.~~

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through the

Maine Department of Health and Human Services
~~Office of Elder Services~~Office of Aging and Disability
Services

Appropriation Number 010-10A-6000-012

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STATUTORY AUTHORITY

**PL 99, Chap 4; 22 MRSA Sec. 312, 5106, 5107, 6203, 7303, 7915 and
24-A MRSA Sec. 6214**

Recent History

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

November 1, 1997

(Note: Section 61 is suspended from October 15, 1997 to January 13, 1998 by the emergency adoption of 10-144 Chapter 117. Section 62.03 is suspended from October 20 by emergency adoption 97-344 effective that date, and repealed effective November 1, 1997 by adoption 97-366. See 10-144 CMR Ch. 113 for the subject matter of Section 62.03.)

AMENDED:

December 24, 1997 - removal of three words from Section 68(D)

NON-SUBSTANTIVE CORRECTIONS:

February 13, 1998 - numbering corrected to 15.08 and 15.09 (had been in error 15.06 and 15.08)

AMENDED:

June 2, 1998 - Section 71

NON-SUBSTANTIVE CORRECTION:

August 5, 1998 - rule reference in Section 71.05(F)(13)(b)

AMENDED:

September 23, 1998 - added Sections 73 and 74)

JULY 1, 1999 - SECTIONS 40, 61, 62, 63, 68, 69, 73

August 14, 1999 - Sections 1, 40, 61, 62, 63, 66, 68, 69, 73

CORRECTION:

October 21, 1999 - restored the November 1, 1998 version of Section 71 as authorized by a September 3, 1999 memo from Assistant Attorney General Jane Gregory

AMENDED:

February 1, 2000 - Sections 61, 62, 63, 68, 69, 73 (*EMERGENCY - Major Substantive - undergoing legislative review*)

March 29, 2000 - routine technical changes to Sections 63, 69, 73

May 21, 2000 - major substantive changes to Sections 61, 62, 63, 68, 69, 73

January 2, 2001 - Sections 1, 15, 40, 61, 62, 63, 68, 69, 74

NON-SUBSTANTIVE CORRECTIONS:

February 5, 2001 - Introduction, Sections 10, 11, 12, 14, 16, 30, 64, 65, 66, 67, 70, 71, 72, 73 - punctuation and renumbering only

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July 1, 2001 - Section 73
May 23, 2002 - Section 73.02(A)(4), filing 2002-160 (*EMERGENCY - expires August 21, 2002.*) Note: the Department of Labor, Bureau of Rehabilitation Services, has been assigned rule-making power over this area of the Manual. The Manual is being reorganized in consequence and the relevant parts will be relocated to the Department of Labor when appropriate.

REPEALED:

July 8, 2002 - Section 74, filing 2002-250

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July 8, 2002 - Sections 40, 61, 62, 63, 65, 68, 69, and 70, filing 2002-250

NEW SECTION:

July 8, 2002 - Section 75, filing 2002-250

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July 1, 2003 - Sections 40, 61, 62, 63, 68, and 69, filing 2003-204

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August 10, 2004 - Section 73, filing 2004-311

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October 4, 2004 - Sections 40 and 63, filing 2004-427
October 30, 2005 - Section 63, filing 2005-446
October 30, 2005 - Section 69, filing 2005-447
July 1, 2006 - Section 10, filing 2006-273
July 2, 2006 - Section 69, filing 2006-291
October 6, 2007 - Sections 11, 12, 14, 15, 16, filing 2007-423\
February 1, 2009 - Sections 68 and 69, filing 2009-16
July 1, 2009 - Sections 63 and 69, filing 2009-296 (*EMERGENCY*)
September 28, 2009 - Sections 63 and 69, filing 2009-505
May 28, 2018 - Sections 11, 12, and 14 repealed, filing 2018-086

REPEALED:

2022 - Section 65, filing xxxx-xxx

Chapter 6 Section 5 NUTRITION SERVICES PROGRAM

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5.01 INTRODUCTION

This Section establishes Maine's Nutrition Services Program (NSP) pursuant to the Older Americans Act (OAA) (42 U.S.C. §§ 3001, *et seq.*). Maine's NSP assists adults in remaining healthy and active in their communities and in avoiding premature or inappropriate institutionalization by providing nutrition services to adults with the greatest social and economic need, with attention to people who are low-income Older Individuals, low-income minority Older Individuals, Older Individuals with limited English proficiency, and Older Individuals residing in Rural Areas. Maine's NSP includes Congregate Nutrition Services, Home Delivered Nutrition Services, Nutrition Counseling, and the Nutrition Services Incentive Program (NSIP).

5.02 DEFINITIONS

1. **Activities of Daily Living** are tasks that are essential to a person's daily living, including bathing, dressing, toileting, transferring, continence, and feeding as defined by the State Performance Report for State Units on Aging, Appendix A: Data Element Definitions, Version 2.0 (OMB Control Number 0985-0072).
2. **Area Agency on Aging (AAA)** means an entity designated pursuant to 42 U.S.C. § 3025(a)(2)(A) of the Older Americans Act or a State agency performing the function of an area agency on aging pursuant to 42 U.S.C. § 3025(b)(5).
3. **At Risk for Institutionalization** as defined by 42 U.S.C. § 3002(9), means, with respect to an Older Individual, that such individual is unable to perform at least 2 Activities of Daily Living without substantial assistance (including verbal reminding, physical cuing, or supervision) and determined by the State involved to be in need of placement in a long-term care facility.
4. **Caregiver** means an individual who has the responsibility for the care of an Older Individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and means a family or other individual who provides (on behalf of such individual or of a public or private agency, organization or institution) compensated or uncompensated care to an Older Individual as defined by 42 U.S.C. § 3002(18)(B).
5. **Congregate Meal** as defined by the State Performance Report for State Units on Aging, Appendix A: Data Element Definitions, Version 2.0 (OMB Control Number 0985-0072), means a meal provided by a qualified nutrition project provider to a qualified individual in a congregate or group setting. The meal is served in a program that is administered by the AAA or its subcontracted entity and meets all the requirements of the Older Americans Act, State and local laws. Meals provided to individuals through means-tested programs may be included.
6. **Department** means the Maine Department of Health and Human Services.
7. **Frail**, as defined by 42 U.S.C. § 3002(22), means that the Older Individual is determined through an OADS approved assessment to be functionally impaired because the individual:

- A. is unable to perform at least two (2) Activities of Daily Living without substantial human assistance, including verbal reminding, physical cueing, or supervision as identified through an OADs approved assessment; or
 - B. due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves in a manner that poses a serious health or safety hazard to the individual or to another individual.
- 8. **Greatest Economic Need** means the need resulting from an income level at or below the poverty guidelines as provided in the most recent U.S. Department of Health and Human Services (HHS), published each year in the Federal Register.
- 9. **Greatest Social Need** means the need caused by noneconomic factors which includes, but is not limited to, physical and mental disabilities, language barriers, and cultural, social, or geographical isolation including isolation caused by racial or ethnic status, gender identity, or sexual orientation that restricts an individual's ability to do normal daily tasks or that threatens such individual's capacity to live independently as defined by 42 U.S.C. § 3002(24).
- 10. **Home Delivered Meal** as defined by the State Performance Report for State Units on Aging, Appendix A: Data Element Definitions, Version 2.0 (OMB Control Number 0985-0072), means a meal provided to a qualified individual in their place of residence. The meal is served in a program that is administered by the AAA or its subcontracted entity and meets all the requirements of the Older Americans Act and this Section. Home Delivered Meals includes meals provided to individuals under means-tested programs.
- 11. **Homebound** means an Older Individual who:
 - A. because of illness, incapacitating disability, or Frailty, needs the aid of supportive devices, the use of special transportation, or the assistance from another person to leave their place of residence, or who has a condition for which leaving the home is medically contraindicated; and
 - B. requires a considerable and taxing effort to leave home.

A person may leave their home to receive health care treatment, or for non-medical reasons, and nonetheless be considered Homebound if the absences from the home are infrequent and for periods of relatively short duration. See Medicare Benefit Policy Manual (MBPM), Pub. No. 100-02, ch. 7, § 30.1.1.
- 12. **Individual with a Disability** means a person who is not less than age 18 and not older than 59 with one or more physical or mental impairments that substantially limit one or major life activities of such individual, with a record of such an impairment, or who is regarded as having such an impairment, in conformance with the definition of “disability” in the Americans with Disabilities Act of 1990, 42 U.S.C. § 12102(1).
- 13. **Instrumental Activities of Daily Living** means self-care tasks including ability to use telephone, shopping, food preparation, housekeeping, laundry, mode of transportation,

medication management, and ability to manage finances as defined by the State Performance Report for State Units on Aging, Appendix A: Data Element Definitions, Version 2.0 (OMB Control Number 0985-0072).

14. **Nutrition Counseling** as defined by the State Performance Report for State Units on Aging, Appendix A: Data Element Definitions, Version 2.0 (OMB Control Number 0985-0072), means a standardized service developed by the Academy of Nutrition and Dietetics that provides individualized guidance to individuals who have a high Nutrition Risk Score. Nutrition Counseling is provided one-on-one by a Registered Dietitian and addresses the options and methods for improving status with a measurable goal.
15. **Nutrition Director** means an individual with education and training in nutrition science or an individual with comparable expertise in the planning of nutrition services.
16. **Nutrition Education** as defined by the State Performance Report for State Units on Aging, Appendix A: Data Element Definitions, Version 2.0 (OMB Control Number 0985-0072), means an intervention targeting Older Americans Act participants and caregivers that uses information dissemination, instruction, or training with the intent to support food, nutrition, and physical activity choices and behaviors (related to nutritional status) in order to maintain or improve health and address nutrition-related conditions. Content is consistent with the Dietary Guidelines for Americans; is accurate, culturally sensitive, regionally appropriate, considers personal preferences; and is overseen by a Registered Dietitian or individual of a comparable expertise as defined in the OAA.
17. **Nutrition Risk Score** indicates the person's total score on the DETERMINE your Nutritional Health Risk checklist published by the Nutrition Screening Initiative (NSI) to measure an individual's nutritional risk.
18. **Nutrition Service Incentives Program (NSIP) Qualified Meal** means a Congregate Meal or Home Delivered Meal.
19. **OADS Data System** refers to the system by which OADS captures data surrounding this program as described in this Manual.
20. **Office of Aging and Disability Services (OADS)** means the designated office within the Maine Department of Health and Human Services that supports the needs of Older Individuals and is the designated State Unit for Aging on the federal level.
21. **Older Individual** means an individual who is 60 years of age or older as defined by the Older Americans Act, 42 U.S.C. § 3002(40).
22. **Provider** means an Area Agency on Aging or its subcontracted entity.
23. **Referral** means any request for services provided under the Nutrition Services Program.
24. **Registered Dietitian** means an individual that is a food and nutrition expert who has been credentialed by the Academy of Nutrition and Dietetics.
25. **Rural Area** means a type of developed environment in which the consumer lives as defined by the rural-urban commuting area (RUCA) codes defined at the zip code level.

5.03 NUTRITION SERVICES INCENTIVE PROGRAM (NSIP)

The United States Department of Health and Human Services, Administration for Community Living (ACL) allocates additional funds to OADS to reimburse AAAs and subcontracted entities for the costs of congregate and home delivered meals served to eligible people under the Nutrition Services Program. This allocation is based on the number of meals served in the previous year, in proportion to the total number of meals served by all states that year.

OADS shall choose whether to receive reimbursement in the form of cash or commodities from the ACL. OADS shall distribute all cash and/or commodities received from the ACL to eligible AAAs based on the previous year's meal counts.

To facilitate reporting requirements and support OADS's continued receipt of adequate funding for the Nutrition Services Program, Providers of Nutrition Services shall:

1. Report to OADS the number of meals provided to individuals who meet the eligibility criteria in § 5.04-1 to -2.
2. Comply with the Provider Requirements set forth in § 5.05.

5.04 NUTRITION SERVICES PROVIDED

Nutrition services shall be provided in conformance with this rule. AAAs must provide Congregate Nutrition Services, Home Delivered Nutrition, Nutritional Counseling and Nutrition Education throughout their designated planning and service areas either by directly providing services, subject to a Department approved direct service waiver, or through a subcontracted entity.

1. Congregate Nutrition Services

Congregate Nutrition services provide meals, socialization and nutrition information in a community setting in conformance with the following requirements.

A. Eligibility & Priority

The following individuals are eligible for Congregate Nutrition and shall be prioritized for receiving Congregate Nutrition Services from Providers in the following order:

- (1) Individuals referred by OADS Adult Protective Services (APS);
- (2) Individuals age 60 or older in Greatest Social Need and/or Greatest Economic Need;
- (3) Individuals age 60 or older;
- (4) Spouses, of any age, of eligible individuals age 60 or older;
- (5) Volunteers of the Nutrition Services Program age 60 or older who provide services during the meal hours;

- (6) Individuals with a Disability under age 60 who reside in housing facilities occupied primarily by Older Individuals where Congregate Nutrition is served;
- (7) Individuals with a Disability under age 60 who reside with and accompany Older Individuals to the community dining site;
- (8) Volunteers of the Nutrition Services Program under age 60 who provide services during the meal hours.

B. Otherwise Ineligible

- (1) Provider staff and their guests may receive meals so long as it does not deprive an otherwise eligible individual of a meal, and they pay the full cost of the meal.

C. Congregate Meal Site Requirements

- (1) Providers of Congregate Nutrition services receiving federal funds shall:
 - (a) Utilize a paid or volunteer meal site manager who is responsible for all nutrition activities at the site. The manager must have experience working with and communicating effectively with Older Individuals.
 - (b) Provide notice to individuals, the public, and OADS regarding openings, closings, relocations, changes in days or hours of a congregate meal site at least ten (10) business days in advance unless emergency or unforeseen event exists that prevents such notice.
- (2) Providers of Congregate Nutrition services are prohibited from charging participants age 60 or older a fee for a congregate meal.

D. Service Reduction, Denial or Termination

- (1) Providers may deny, reduce, or terminate Congregate Nutrition services for an individual when:
 - (a) The individual does not meet the eligibility requirements in this Section;
 - (b) Physician-ordered dietary requirements for the individual cannot be met by the modified diets available in the program;
 - (c) The individual engages in sexual or other illegal harassment of an employee, volunteer, or another participating individual;
 - (d) The individual's participation puts others, including service Providers, in danger; or
 - (e) Funds are not available.

- (2) Notice of any denial, reduction, or termination of services must be provided in accordance with 10-149 C.M.R. ch. 5, Section 40, § 40.01.

2. **Home Delivered Nutrition**

Home Delivered Nutrition services are home delivered meals provided to eligible individuals on a daily or less frequent basis. Providers shall make Home Delivered Nutrition services available in conformance with the following:

A. **Eligibility & Priority**

In order to be eligible to receive home delivered meals, an individual must be either:

- (1) 60 years of age or over and:
 - (a) Homebound;
 - (b) Unable to prepare their own meals or lacking support with meal preparation;
 - (c) Not residing in assisted housing where Congregate Nutrition is available;
 - (d) Unable to participate in Congregate Nutrition services; and
- (2) Under 60 years of age, and:
 - (a) The individual has a disability and eligible under Social Services Block Grant Funds or its successor(s) (and those funds are available) who:
 - i. Resides with others receiving home delivered meals; or
 - ii. Was referred by APS staff.
- (3) Eligible individuals shall be served in priority order:
 - (a) Older Individuals referred by APS;
 - (b) Older Individuals who are at high nutritional risk as indicated by the OADS-approved assessment;
 - (c) Older Individuals who are Frail;
 - (d) Older Individuals who live in Rural Areas;
 - (e) Older Individuals in the Greatest Economic and/or Social Need;
 - (f) Older Individuals who have the greatest Risk of Institutionalization;

- (g) Older Individuals who have been on the waiting list for the greatest number of days;
- (h) A spouse, of any age, of a qualifying individual above, if, according to criteria determined by the AAA or its subcontracted agency, receipt of the meal by the spouse is in the best interest of the Homebound Older Individual;
- (i) Individuals with a Disability, under age 60, who reside in housing facilities occupied primarily by Older Individuals at which Congregate Nutrition services are provided;
- (j) Individuals with a Disability, under age 60, who reside with Older Individuals receiving home delivered meals if, according to criteria determined by the AAA or its subcontracted entity, receipt of the meal by the Individuals with a Disability under age 60 is in the best interest of the Homebound Older Individual;
- (k) Individuals under age 60 referred by APS (subject to the availability of funds that support such individuals); and
- (l) Individuals with a Disability under age 60 (subject to the availability of funds that support such individuals).

B. Home Delivered Nutrition Services Requirements

- (1) All home delivered meal Providers receiving state and federal funds shall:
 - (a) Complete an in-person assessment of applicants for Home Delivered Nutrition services, using an OADS-approved assessment tool, within ten (10) business days from Referral, if it appears, based on the telephonic screening, that the individual may be eligible for home delivered meals.

Providers are prohibited from providing meals to applicants prior to the completion of an in-person assessment and determination of applicant eligibility, except for in an emergency. In an emergency, Providers may provide meals to applicants prior to the completion of an in-person assessment and determination of eligibility but Providers must complete the in-person assessment within ten (10) business days of service initiation and adjust services based on the in-person assessment. An emergency includes, but is not limited to, the following: a public health emergency, a weather emergency, a natural or man-made disaster, and a referral from APS. Providers may request permission from the Department to provide meals prior to an in-person assessment in emergencies that do not meet the definition above.

- (b) Provide home delivered meals to the eligible individual within two (2) business days of the in-person assessment, or on the next

scheduled delivery date for the individual's geographic area, whichever is sooner, unless the individual is placed on the waiting list.

- (c) Inform individuals of other available benefits and programs, and with the individual's documented permission, provide Referral and follow up to obtain other services.
- (2) Subsequent telephonic or virtual reassessments of eligible individuals must be conducted at least every six (6) months.

C. Waiting List

- (1) When a Provider has insufficient funding to accept new eligible individuals into their home delivered meals program, the Provider shall establish a waiting list for Home Delivered Nutrition services. Eligible individuals on the waiting list shall begin receiving services, when funding permits, according to the priorities listed in § 5.04-2(A)(3).
- (2) Notwithstanding the establishment of a waiting list, the Provider shall continue to telephonically screen each individual referred to the Provider for Home Delivered Nutrition within two (2) business days, using an OADS-approved preliminary telephone screening tool, and assess potentially eligible individuals within ten (10) business days before the individual may be entered on the waiting list.
- (3) Providers will assure that a separate waiting list is maintained for each meal distribution point they administer.
- (4) Providers will continue to inform referred individuals about other potentially available nutrition services and, if appropriate and with their permission, to refer the individuals to those services.
- (5) Once removed from the waiting list, the Provider shall begin providing the individual with Home Delivered Nutrition within two (2) business days, or on the next scheduled delivery day for that individual's geographic location, whichever is sooner.
- (6) If more than six (6) months pass after an individual is found eligible, the Provider must conduct an updated telephonic of the individual before the individual can begin receiving meals.

D. Service Reduction, Denial or Termination

- (1) A Provider may deny or terminate Home Delivered Nutrition services only when:
 - (a) The individual does not meet the eligibility requirements in § 5.04-2(A);
 - (b) The individual declines services;

- (c) Physician-ordered dietary requirements for the individual cannot be met by the modified diets available in the program;
 - (d) The individual engages in sexual or other illegal harassment of a Provider's employee or volunteer;
 - (e) The individual's participation puts others, including service Providers, in danger; or
 - (f) Funds are not available.
- (2) A Provider may reduce an individual's Home Delivered Nutrition services:
- (a) To match the individual's needs if, upon re-assessment, their need for Home Delivered Nutrition services has been reduced; or
 - (b) If federal funding for Home Delivered Nutrition services has been reduced.
- (3) Notice of any denial, reduction, or termination of services must be provided in accordance with 10-149 C.M.R. ch. 5, Section 40, § 40.01.

3. **Nutrition Counseling**

Nutrition Counseling is an individualized service for persons at high nutritional risk, as determined by the OADS-approved assessment. Providers shall provide Nutrition Counseling in conformance with the following:

A. **Eligibility & Priority**

The following individuals are eligible for Nutrition Counseling services, as resources and Provider capacity allow, in the following order of priority:

- (1) Older Individuals referred by APS staff;
- (2) Older Individuals with the Greatest Social Need or Greatest Economic Need;
- (3) Individuals who are not 60 years or older, but who are individuals with a disability who are eligible for Congregate Nutrition or Home Delivered Nutrition services as defined in this Section.
- (4) Spouses, of any age, of individuals who are eligible under § 5.04-1(A).

B. **Nutrition Counseling Requirements**

All providers receiving state and federal funds shall offer Nutrition Counseling to eligible individuals at high nutritional risk, determined by the OADS-approved

assessment. Nutrition Counseling may be offered to individuals at moderate nutritional risk or who receive a good Nutrition Risk Score, subject to resources and Provider capacity.

C. Service Denial or Termination

- (1) Services may be denied or terminated when:
 - (a) The individual does not meet the eligibility requirements in this Section;
 - (b) The individual engages in sexual or other illegal harassment of a Provider's employee or volunteer;
 - (c) The individual's participation puts others, including service Providers, in danger; or
 - (d) Funds are not available.
- (2) Notice of any denial or termination of services must be provided in accordance with 10-149 C.M.R. ch. 5, Section 40, § 40.01.

4. Nutrition Education

Nutrition Education programs provide accurate and culturally sensitive nutrition, physical fitness, or health information to participants and/or their Caregivers in a group or individual setting overseen by a dietitian or individual with comparable expertise. Providers shall make Nutrition Education available in conformance with the following:

A. Eligibility & Priority

- (1) Individuals are eligible for Nutrition Education program services, in the following order of priority:
 - (a) Older Individuals referred for Nutrition Education by APS;
 - (b) Older Individuals with the Greatest Social Need or Greatest Economic Need;
 - (c) Individuals who are not 60 years or older, but who have a disability and who are eligible for Congregate Nutrition or Home Delivered nutrition services as defined in this Section.
 - (d) Spouses, of any age, of individuals who are eligible under § 5.04-1(A).

B. Nutrition Education Requirements:

- (1) Providers of Nutrition Education services must carry out integrated health promotion and disease prevention programs for Older Individuals

that include Nutrition Education, physical activity, and other activities designed to modify behavior and to improve health literacy in accordance with 42 U.S.C. § 3030g-21(2)(J).

- (2) Services may include those provided pursuant to 42 U.S.C. § 3002(14).

C. Service Denial or Termination

- (1) Providers of Nutrition Education services may deny or terminate Nutrition Education services for an individual when:
 - (a) The individual does not meet the eligibility requirements in this Section;
 - (b) The individual engages in sexual or other illegal harassment of a Provider's employee or volunteer;
 - (c) The individual's participation puts others, including service Providers, in danger; or
 - (d) Funds are not available.
- (2) Notice of any denial or termination services must be provided in accordance with 10-149 C.M.R. ch. 5, Section 40, § 40.01.

5. **Social Services Block Grant**

- A. In the event that an individual is ineligible for Congregate Nutrition services, Home Delivered Nutrition services, Nutrition Counseling and/or Nutrition Education, OADS may reimburse Providers for providing services to ineligible individuals from the Department's Social Services Block Grant (SSBG) allocation, subject to availability of funds and the following SSBG eligibility requirements.
- B. Eligible individuals include:
 - (1) Adults under public guardianship;
 - (2) Adults with active APS cases;
 - (3) Older Adults who are receive case management services from an AAA; and
 - (4) Adults with physical disabilities.

5.05 PROVIDER REQUIREMENTS

Providers of nutrition services authorized under this rule shall comply with the following:

1. **General and Specific Requirements**

- A. AAAs must obtain a waiver from OADS to directly provide nutrition services as outlined in 10-149 C.M.R. ch. 5, Section 30, § 30.09.
- B. If a AAA provides any nutrition services through or with the assistance of another person or entity, the AAA must have a written contract with such subcontractor(s) in conformance with this subsection.
- C. Each Provider shall:
 - (1) Maximize the number of eligible individuals who are provided an opportunity to receive nutrition services;
 - (2) Provide outreach, intake, and information and assistance referral services to recipients of nutrition services pursuant to 10-149 C.M.R. ch. 5, Section 67.
 - (3) Comply with 10-149 C.M.R. ch. 5, Section 40;
 - (4) Meet the requirements of the State of Maine Food Code, 10-144 C.M.R. ch. 200;
 - (5) Immediately report any incidence of food borne illness to the Department, Centers for Disease Control and Prevention (CDC) with a follow-up report provided to OADS within ten (10) business days;
 - (6) Provide special meals to the greatest extent possible to meet dietary needs arising from health, religious requirements, or other cultural considerations affecting participating individuals;
 - (7) Conduct periodic surveys, at least once a year, to obtain recipients opinions about meals and meal sites;
 - (8) Participate, where feasible, in group purchasing efforts to maximize cost-effective purchasing; and
 - (9) Report any suspicion of abuse, neglect, or exploitation in conformance with 22 M.R.S. § 3477.

2. **Subcontracts**

- A. AAAs shall include, in all contracts for nutrition services with subcontractors, the following requirements for subcontractors, without limitation:
 - (1) Meet Federal and State rules and regulations for Nutrition Services Programs;
 - (2) Meet the requirements of 10-149 C.M.R. ch. 5, Section 40.
 - (3) Provide OADS staff with access to recipients' records when requested; and

(4) Provide financial records and reports to the AAAs as requested.

B. The AAAs shall visit each subcontracted entity at least annually, to ensure compliance with the parties' contract.

(1) During site visits, the AAAs shall:

- (a) Complete an OADS-approved site review form, including any corrective measures required of the subcontractor.
- (b) Provide a copy of the completed site review form to the subcontractor, including a list of any corrective measures required;
- (c) Submit completed site review forms and identified deficiencies to OADS within ten (10) business days of the site visit;
- (d) Ensure all deficiencies noted on the completed, OADS-approved site review form are corrected by the subcontractor within 30 days of the site visit; and
- (e) Submit to OADS a report documenting the outcome of corrective measures within 45 days of the completion of corrective measures.

C. The AAAs shall retain and make available to OADS for inspection all site review forms and documentation of corrections of deficiencies on file for at least seven (7) years.

D. The AAAs shall identify deficiencies and require corrective action plans from the subcontracted entity.

3. **AAA Staff Requirements**

A. The AAAs shall designate a full-time Nutrition Director. The requirement for a full-time Nutrition Director may be waived by OADS if the AAA:

- (1) Assigns the administration of all the AAA's nutrition services to a subcontractor; or
- (2) Can demonstrate in writing that it is adequately managing its nutrition services without a full-time qualified Nutrition Director.

B. The Nutrition Director will provide program management for the Congregate Nutrition and Home Delivered Nutrition services, including:

- (1) Monitoring and providing technical assistance to subcontractors;
- (2) Supervising nutrition services AAA staff;

- (3) Overseeing general program operations including the safeguarding of cash donations, food handling and storage; and
 - (4) Providing training on a quarterly basis, regarding, at a minimum, aspects of the Nutrition Services Program such as food safety, business with Older Individuals, and other relevant issues.
- C. The AAAs shall hire, contract with, or secure the volunteer assistance of a Registered Dietitian, whose duties shall include, without limitation:
- (1) Reviewing and approving menus to ensure nutrition requirements of this rule are met;
 - (2) Providing dietary education to and supporting Nutrition Services staff with meeting special dietary needs of recipients of services;
 - (3) Reviewing available modified menus with the physician of each individual with unique dietary needs, when needed, to determine whether physician-ordered dietary requirements can be met by the Provider. In the event the Provider concludes it is unable to serve an individual with unique dietary needs, the Provider shall inform the individual, in writing, in conformance with 10-149 C.M.R. ch. 5, Section 40; and
 - (4) Providing Nutrition Counseling to nutrition services recipients, as appropriate, in accordance with the OAA.

4. **Nutrition Manual**

- A. In consultation with the Registered Dietitian, each AAA must create and distribute a nutrition manual, addressing, at minimum, procedures relating to:
- (1) Sanitation;
 - (2) Reporting food borne illness;
 - (3) The handling and storage of leftover foods; and
 - (4) Medical and other emergencies.
- B. This manual shall be reviewed and updated annually, and available anytime to:
- (1) Subcontractors;
 - (2) Employees;
 - (3) Volunteers;
 - (4) OADS; and
 - (5) Any others working with the Nutrition Services Program.

5. **Menu Planning**

- A. All menus must comply with the most recent version of the U.S. Department of Agriculture and U.S. Department of Health and Human Services' Dietary Guidelines for Americans available at dietaryguidelines.gov, and provide:
 - (1) To each eligible individual a minimum of 33.33% of the dietary reference intakes established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences, if the program provides one meal per day;
 - (2) To each eligible individual a minimum of 66.66% of the dietary reference intakes if the program provides two meals per day; or
 - (3) 100% of the dietary reference intakes if the program provides three meals per day.
- B. Menus must be planned for a minimum of four weeks and must be approved and signed by a Registered Dietitian prior to use and retained for inspection by OADS.
- C. Menus must be retained for seven (7) years.
 - (1) Menus must be prepared with no added salt, a minimum of fat, and must include a variety of low fat, low sodium, low cholesterol and low sugar foods while striving to maintain overall menu appeal and acceptability to recipients.

6. **Recipients of Services Surveys**

- A. Providers shall provide and ask recipients of services to complete, voluntarily, satisfaction surveys no less than annually.
- B. The surveys shall address, at a minimum:
 - (1) Food preparation;
 - (2) Size of portions;
 - (3) Frequency with which meals are served;
 - (4) Varieties of foods offered, including culturally appropriate offerings;
 - (5) Delivery and service times; and
 - (6) The temperature of the meals when received.

- C. Individuals with limited English proficiency shall be provided an opportunity meaningfully to participate in the survey.
- D. Responses from individuals and a summary of results must be made available on request and retained electronically for inspection by OADS for seven (7) years.

7. Voluntary Contribution System

- A. Each AAA shall develop and maintain a confidential voluntary contribution collection system policy which is submitted to OADS for approval on at least an annual basis.
- B. The AAAs must:
 - (1) Explain the voluntary contribution collection system to recipients both orally and in writing;
 - (2) Accept Supplemental Nutrition Assistance Program as payment of voluntary contributions; and
 - (3) Retain records of collections by nutrition service, not individual contributions.
- C. Each AAA shall prepare quarterly reports, aggregated by nutrition service, and ensure reports are available to OADS upon request. Each AAA shall retain its quarterly reports for at least seven (7) years.

8. Records and Reports

- A. Each AAA shall keep records and submit reports to the Department as specified in the contract between the Department and the AAA. This includes, but is not limited to, reporting in the OADS Data System. OADS must provide advanced notice to the AAAs if reporting requirements change.
- B. The AAA will also report, by the fifteenth (15th) day of each month, the number of meals provided in the preceding month as required by the OADS Data System. The AAA will specify the funding source for each meal in the OADS Data System.
- C. Providers shall enter and maintain individual information and service information in the OADS Data System pursuant to the State Performance Report for State Units on Aging, Appendix A: Data Element Definitions, Version 2.0 (OMB Control Number 0985-0072). OADS may require Providers to enter additional data beyond the provisions the State Performance Report for State Units on Aging, as specified in the contract between the Department and the AAA. OADS must provide advanced notice to the AAAs if reporting requirements change.

5.06 RESPONSIBILITIES OF OADS

1. To ensure compliance with this Section and all applicable state and federal regulations and policies, OADS shall:
 - A. Establish performance standards for AAAs via contract;
 - B. Monitor the AAAs, on at least an annual basis, for strengths, challenges, deficiencies, violations, or disallowed costs in the program;
 - C. Identify deficiencies and require corrective action plans from the AAAs;
 - D. Provide technical assistance as necessary;
 - E. Review all subcontracts under this Section to ensure compliance;
 - F. Assure the continuation of nutrition services if OADS determines that a Provider's contract must be terminated pursuant to the Older Americans Act; and
 - G. Administer the program directly if an AAA is unable to provide nutrition services as directed by the Older Americans Act.